

*Bowman v. Dozier*, No. 02-35007

**AUG 05 2003**

BERZON, J., concurring:

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

I do not agree with the majority's conclusion that there was no excessive force used. In Janet Bowman's version of events, which must be credited for present purposes, she informed Deputy Dozier that she "broke easy"; that she had suffered a stroke; and that she moves slowly. When Deputy Dozier insisted that it was time to effectuate an arrest, Bowman said she was ready to go. The crime in question, hitting her husband with a mop during a domestic dispute, was certainly not a serious one.

Under these circumstances – where a clearly impaired, elderly person was being arrested for a minor crime and was not resisting arrest, and the arresting officer had specific reason to know that she was prone to physical injury from even minor force – I would hold that the use of even such minor force to effectuate an arrest was excessive. The officer could have waited a bit longer; alternatively, he could have arranged to have Bowman carried to the police car rather than pulling on her with sufficient force to tear her rotator cuff.

I nonetheless concur in the result, as I agree that there is no clearly established law to this effect. *See Saucier v. Katz*, 533 U.S. 194, 202 (2001).